It is worthy of note that Order 19 r.15, of the Rules of the Supreme Court, 1957, provides as follows:

"The defendant or plaintiff (as the case may be) must raise by his pleading all matters which show the action or counterclaim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence or reply, as the case may be, as if not raised would be likely to take the opposite party by surprise, or of the preceding pleadings, as, for instance, fraud, limitation, release, payment, performance, facts showing illegality either by Statute or common law, or Statute of Frauds."

In *Soon Hon Seng* v. *Bong Khiuk Nyong*[1] the Federal Court in its judgment necessarily implied that the Statute of Frauds 1677 is in force in Sarawak.

Where the parties enter into a formal document the intention to enter into formal legal relationship is obvious.

But when all that happens is a quite casual conversation whether on the telephone or otherwise, it is very much more difficult to infer that the parties are really contemplating entering into any legal relationship.

The law, it seems to me, does not impute intention to enter into such a legal relationship as that of vendor and purchaser where the circumstances and the conduct of the parties negative any intention of the kind.

It is true negotiations ensued, but the evidence before me seems to indicate that the parties do not intend to be immediately bound, or to put it into Latin, that they have no present *animus contrahendi*, which is of course necessary on the part of all parties to the formation of a contract. What passed was only a negotiation from beginning to end.

Much has been made of the fact that Mr. S. K. Reddi said there was no need for the plaintiff to make an offer in writing and that it would be sufficient for the plaintiff to telephone the offer.

The question then arises can a person contract out of a statutory provision such as the Statute of Frauds with which we are dealing. The answer seems to be "You can no doubt but if you take that course you do so at your own peril".

On the evidence as a whole I am satisfied as a matter of fact that the balance of probability is in favour of the defendant's account of what occurred and I accept his evidence. It seems quite clear and I so find that there was no agreement as to the inclusion of the orchids or furniture in the purchase of the house. Nor, in my opinion was there any agreement come to between the plaintiff and the defendant as to the proposed mode of payment of the purchase price of the house by the plaintiff and I so find.

Before I depart from this case I ought perhaps to add what was said by Lord Buckley L.J. in the recent case *Law* v. *Jones*[2] at page 1001:

"Oral agreements for the sale of land are not common, but they are certainly not unknown. Where laymen have entered into such an agreement, it would, I think, be natural for them to expect that, when the matter had been put into the hands of their legal advisers, the contract would be given a more formal written embodiment."

See also *Tiverton Estates Ltd.* v. *Wearwell Ltd.*[3]

In view of my finding in respect of the first question the other question, whether the contract, if any, is enforceable by virtue of section 4 of the Statute of Frauds, 1677 does not therefore arise.

Even if it be assumed in favour of the plaintiff that what was alleged by him is true, the oral contract is unenforceable in law for failure to conform with the provisions of the Statute of Frauds. (See *Halsbury's Laws of England*, 3rd Edn., Vol. 34, page 207 paragraph 346 and Vol. 8, page 87 paragraph 151.)

The claim for damages for misrepresentation must necessarily likewise fail.

In my judgment there is neither substance nor merit in the other grounds. There must accordingly be judgment for the defendant with costs.

Claim failed.

Solicitors: *Thomas & Co.; Chan, Jugah & Wan Ullok.*

K. PALANIANDY v. TAN BOON YEW

[A.C.J. (Wan Suleiman F.J.) June 26, 1974]
[Seremban — Civil Appeal No. 6 of 1972]

Control of Rent — Rent Assessment Board — Appeal from decision of — Conditions — Power of Board to impose Certificate — Control of Rent Ordinance, 1956, s. 12(1)(m).

This was an appeal by the tenant of premises owned by the respondent from a decision of the Rent Assessment Board. The respondent owner had applied to the Board for a certificate under section 12(1)(m) of the Control of Rent Ordinance 1956. The board made an order from which the tenant appellant appealed. His appeal was successful and the case was remitted back to the board. The board considered the application again, and issued a certificate under section 12(1)(m), one of the terms of which differed from the first certificate, *inter alia*, in that the sum of $11,000 compensation payable by the respondent was reduced to $2,500. The tenant appellant once again appealed and the respondent cross-appealed disputing the validity of the order to pay the stated sum of $2,500 in the certificate of the board, contending that the board had no power to order payment of compensation when granting a certificate under section 12(1)(m). Under section 8(1)(e) of the Ordinance the board may on granting a certificate under section 12(1)(m) impose such conditions as to it may seem just as between the parties.

Held: the board had adequate and reasonable grounds for imposing the condition of compensation, and the first order remitting the case back to the board did not restrict it to re-imposing the conditions it had originally imposed.

Cases referred to:-

(1) *Loxton* v. *Ryan* [1921] St. R. Qd.

(2) *Commonwealth of Australia* v. *Schimdt (No. 1)* [1963] A.L.R. 276.

CIVIL APPEAL.

D. P. Vijendran for the appellant.

Atma Singh Gill for the respondent.

Wan Suleiman F.J.: This is an appeal by the tenant against part of the decision of the Rent Assessment Board Seremban made on 10th February 1969.

The respondent, the owner of the premises, No. 211 Rantau, Seremban had applied to the Rent Assessment Board for a certificate under section 12(1)(m) of the Control of Rent Ordinance, 1956.

The application was originally heard by the board on 22nd December 1966, 18th August 1967 and 5th September 1967 and on 9th October 1967 the following order was made:—

"On the application of Tan Boon Yew for an order under paragraph (m) of sub-section (1) of section 12 of the Control of Rent Ordinance, 1956 and upon hearing the parties the board orders as follows:

1. (a) If the applicant could find an alternative site agreeable to the respondent, the applicant shall

(i) transfer the land to the respondent free of all costs and of all encumbrances, and in addition

(ii) must pay a compensation of $6,000/- to the respondent.

(b) The respondent must then give vacant possession of the land in question within a period of six months of the date of the full compliance of the conditions at 1(a)(i) and 1(a)(ii) above.

ALTERNATIVELY:

2. (a) The applicant shall pay a compensation of $11,000/- to the respondent.

(b) The respondent must then give vacant possession of the land in question within a period of six months from the date of the receipt of the compensation.

3. The applicant is given the option of fulfilling either of the orders given at paragraphs (1) and (2).

4. All rents due up to the date of vacation of the land must be paid in full by the respondent at the rate of $2/- p.m.

5. The board makes no order as to the costs of these proceedings."

Against this order, the present appellant appealed (High Court Seremban Civil Appeal No. 4 of 1968), and Dato Abdul Hamid J. on 10th February 1969 allowed the appeal.

In allowing the appeal his Lordship said "I remit the case back to the board to decide on the issue of a certificate. If a certificate is issued they may impose conditions comformable to law as to the board may seem just as between the parties."

Pursuant to this the application was then again considered by the board on 8th January 1970. No further evidence was recorded, but further submissions were made by counsel for both sides, and on 2nd November 1970, the board issued a certificate under section 12(1)(m) of the Control of Rent Ordinance, 1956 in the following terms.

"CERTIFICATE

Upon the application of Tan Boon Yew, the applicant above named and upon hearing counsel for the applicant and counsel for the respondent, the board is satisfied that the owner of the premises No. 211, Rantau Village, Seremban, intends to demolish them for the purpose of rebuilding and in its opinion it is in the public interest that he should be permitted to do so provided:—

(a) the applicant shall allow the respondent to remain in the premises for a period not exceeding six months from the date of this certificate;

and (b) the applicant shall pay a compensation of $2,500/- (Dls. Two thousand and five hundred) to the respondent."

In the present appeal, the appellant/tenant advanced the following grounds of appeal:

"1. The board erred in law in misdirecting itself that upon the case being remitted to it from the High Court it had power to reduce its assessment of compensation of $11,000/- to $2,500/-.

2. The board misdirected itself in apparently assuming that the very fact that the High Court had remitted the case meant that the board had to reduce the compensation from what it had originally awarded.

3. The board erred in law in not stating the reasons as to why the figure of compensation was reduced from the original figure of $11,000/- to $2,500/-.

4. The board erred in law in awarding only $2,500/- to the tenant as compensation which sum is manifestly inadequate."

The respondent cross-appealed on the ground that whilst the certificate was valid, proviso or condition (b) requiring him to pay compensation of $2,500/- to the appellant/tenant was *ultra vires* its powers since the Board had no powers to order payment of compensation by the owner to a tenant when granting a certificate under section 12(1)(m) of the Ordinance.

It is therefore common ground that the certificate itself was properly issued.

It will be convenient to deal fully with the ground raised in the cross-appeal by respondent.

Under section 8(1)(e) the Board may on granting a certificate under section 12(1)(m) of the Ordinance, *"impose such conditions as to it may seem just as between the parties"*. What then is the meaning of the word "just"?

In the Australian case of *Loxton* v. *Ryan*,[1] clause 3 of a building contract provides:

"The architect, during the progress of the works, shall be the sole judge of all matters arising out of the contract ... and against his decision, providing it be just and impartial, there shall be no appeal."

Luken J. remarked "I cannot accept the plaintiff's interpretation of the word 'just' in this clause as meaning simply honesty in the architect. What is required is that his decision shall be just, which I take to mean that his decision shall be right and fair, having reasonable and adequate grounds to support it, well founded and conformable to a standard of what is proper and right."

In *A.G. of the Commonwealth of Australia* v. *Schimdt (No. 1)*,[2] at page 277 Kitto J. said, "In my opinion, the expression 'just claims' [in S.13D(2)(a) of the Trading with the Enemy Act 1939-1957 (Com.)] should be understood, in the absence of a controlling context, as referring only to demands which are justified on legal grounds — rights to payments or to property, not by the caprice of the judge, but according to sufficient legal reasons or on settled legal principles: *Beddow* v. *Beddow* (1878), 9 Ch. D. 89 at page 93."

So it would appear that just conditions as between the parties in section 8(1)(e) of the Ordinance are those having reasonable and adequate grounds to support them, and not dependent merely on the caprice of the board.

Did the board have reasonable and adequate grounds in imposing condition (b)? In his grounds, the Chairman of the Board (at page 15 of the Appeal File) stated that the award of $2,500 "was to compensate him (i.e. the tenant) for the inconvenience caused to him for moving out of the premises." A glance at his grounds of judgment in the earlier appeal (Pgs. 19 to 26 in Civil Appeal No. 4 of 1968) will give a

better appreciation of the considerations which the chairman had in mind in awarding compensation, foremost among which must have been the fact that appellant's father had built the premises about 1940, that the appellant had spent some considerable sum (though the chairman thought that his claim to having spent $5,500 was exaggerated) in rebuilding or repairs, and that appellant's business on the premises was his only means of livelihood.

That being so, I would hold that there were indeed reasonable and adequate grounds for this condition, grounds both fair and just, not dependent on the mere caprice of the board, and would dismiss the cross-appeal by the landlord with costs.

I am equally satisfied that the terms of the order made by Dato Abdul Hamid J. dated 10th February 1969 in Civil Appeal No. 4 of 1968, (see page 1 in records of Civil Appeal No. 6 of 1972) did not in any way restrict the board to re-imposing the conditions it had originally imposed, should it decide to issue the certificate.

Accordingly, the appeal is also dismissed with costs.

Appeal dismissed.

Solicitors: *Athi Nahappan & Co.; Atma Singh Gill & Gill.*

YEOH TAT THONG v. GOVERNMENT OF MALAYSIA & ANOR.

[O.C.J. (Chang Min Tat J.) July 5, 1974]
[Penang — Civil Suit No. 224 of 1973]

Land Law — Lands in Penang held under indentures by the East India Company — Replacement title issued — Whether lands are land alienated before the commencement of the code — Whether subsidiary legislation made under the National Land Code ultra vires or null and void — National Land Code (Penang and Malacca Titles) Act, 1963 — National Land Code, 1965, s. 439.

In this case the plaintiff asked for declarations (a) that his lands were not alienated lands within the meaning of either section 101 and 102 of National Land Code; (b) that paragraph 2(a) of the Second Schedule of L.N. 478 and the notification in P.U. (A) 526 were *ultra vires* section 439 of the National Land Code; and (c) that Penang P.U. 4 of 1970 and P.U. 39 of 1969 were null and void and of no operative effect. The plaintiff's lands were originally held under indentures by the East India Company and replacement titles had been issued in respect thereof.

Held: (1) the lands comprised in the indentures were lands alienated before the commencement of the Code within the ambit of section 102 of the National Land Code, 1965;

(2) the court was bound by the decision of the Federal Court in Special Cases No. 1 and 2 of 1974 to hold that paragraph 2(a) of the Second Schedule of L.N. 478 and the Notification in P.U. (A) 526 were not *ultra vires* section 439 of the National Land Code and that Penang P.U. 4 of 1970 and P.U. 39 of 1969 were not null and void.

Cases referred to:-

(1) *Oriental Holdings* v. *Government of the State of Penang and Government of Malaysia* [1972] 2 M.L.J. 248.

(2) *Philip Hoalim Jr. & Anor.* v. *State Commissioner, Penang* [1974] 2 M.L.J. 100.

(3) *Lau Gek Swee & Co. Sdn. Bhd.* v. *State Commissioner, Penang* [1974] 2 M.L.J. 103.

CIVIL SUIT.

Lim Kean Chye for the plaintiff.

Abdullah Ngah (Senior Federal Council) for the first defendant.

Abu Talib bin Othman, Legal Adviser, Penang for the second defendant.

Chang Min Tat J.: In this action, the plaintiff sought various declaratory orders to rule out effectively the provisions for enhanced quit rents from his lands. He asked first for a declaration that his lands were not alienated lands within the meaning of either section 101 and section 102 of the National Land Code, secondly that paragraph 2(a) of the second schedule of L.N.478 and the notification in P.U.(A)526 were *ultra vires* section 439 of the National Land Code and that Penang P.U.4 of 1970 and P.U.39 of 1969 were null and void and of no operative effect.

Briefly, by paragraph 2(a) of the second schedule of L.N.478, "land held under interim title or final replacement title shall be deemed to be land alienated before the commencement of the Code and references to alienated land shall be construed accordingly." The order under P.U.(A)526 by the deletion of paragraph 9 of L.N.478 brought lands in Grants (first-grade) under the National Land Code (Penang and Malacca Titles) Act 1963 or final replacement title issued in respect of such grants back within this definition. Penang P.U.39 of 1969 was a Direction for Standard Rate Rent and Penang P.U.4 of 1970 was a Notice of Periodic Revision of Rent.

The defendants were the Government of the Federation of Malaysia and the Director of Lands and Mines Penang. The Government was concerned in respect of L.N.478 and P.U.(A)526. The Director of Lands was brought in over P.U.39 of 1969 and P.U.4 of 1970.

The subsidiary legislations have been dealt with extensively by me in *Oriental Holdings* v. *Government of the State of Penang and Government of Malaysia*[1] and I do not propose to repeat them here. The fact of the case itself is not strictly in point. There I dealt with a piece of land that was effectively granted by the State Authority under the State Land Ordinance (S.S. Laws Cap. 113). That piece of land was, in the interpretation by the Federal Court in Special Case No. 1 of 1973, "alienated land" within the definition in section 5 of the National Land Code.

Here I am concerned with 4 pieces of land which could be traced back through an unbroken line of transactions to grants made under indentures by the East India Company.

These indentures have been set out in the Agreed Bundle of Documents. Briefly, the first was Indenture No. 70 of 1852/53, for old Lots Nos. 11 and 12 in Mukim 16, North East District of Penang. The second was Indenture No. 210 of 1852/53 for old Lots Nos. 22 and 23(1) in the same mukim and district. The dates of these indentures were 2 September 1852 and 11 April 1853 respectively.

Now indentures were considered by the Federal Court in Special Case No. 1 of 1973[2] which was referred to it under the provisions of section 48(2)